BORA LASKIN LAW LIBRARY
3 1761 10631496 6

MUNICIPAL AND PLANNING LAW

S. M. Makuch

Volume I

1989 - 1990

With the assistance of

Gabrielle Kramer

Faculty of Law

University of Toronto

LAW LIBRARY
SEP 18 1989
FACULTY OF LAW
UNIVERSITY OF TORONTO

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

MUNICIPAL AND PLANNING LAW

S. M. Makuch

Volume I

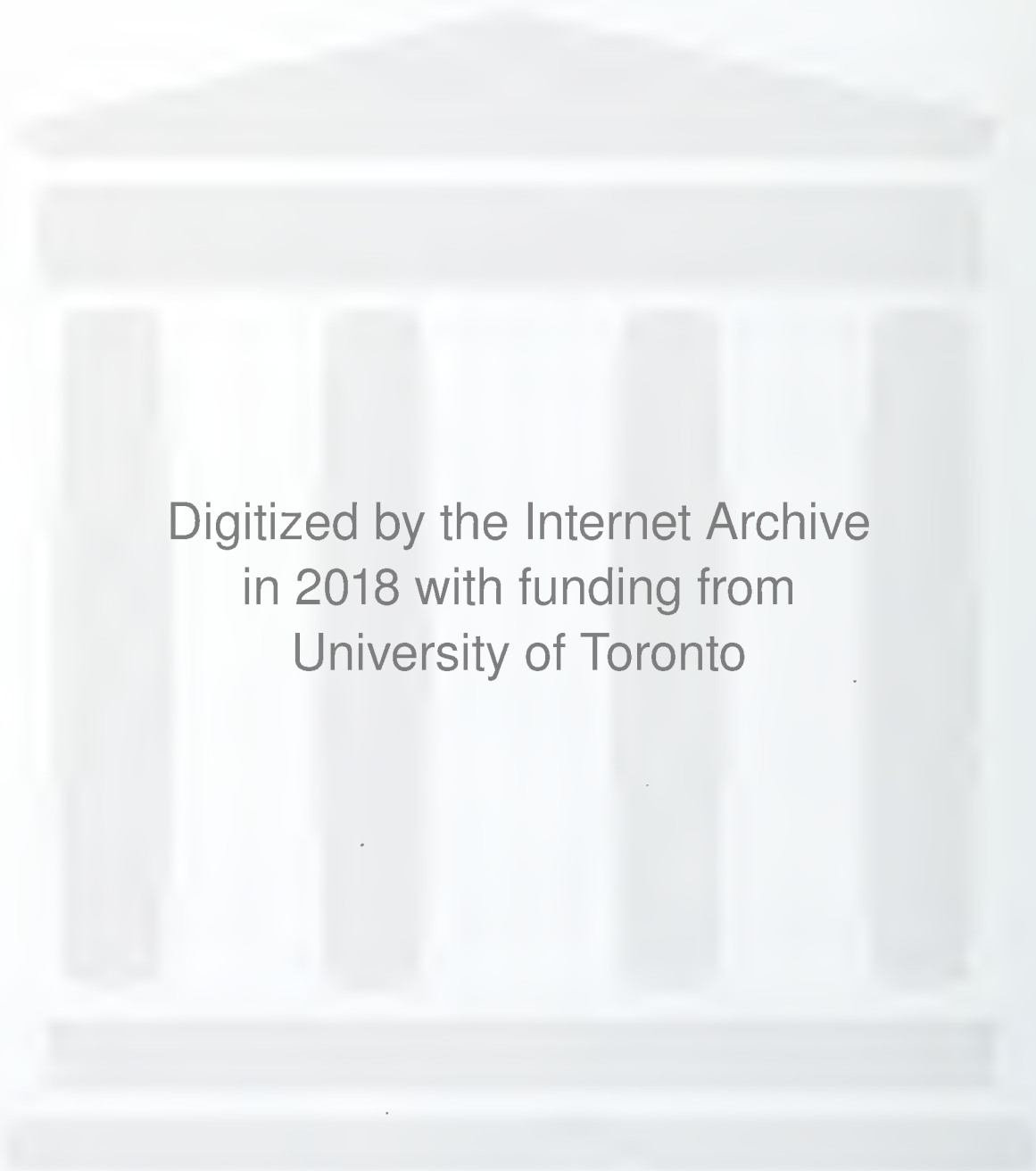
1989 - 1990

With the assistance of

Gabrielle Kramer

Faculty of Law

University of Toronto


Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/municipalplannin01maku_9

MUNICIPAL AND PLANNING LAW

Table of Contents

PART I

CHAPTER I

Introduction 1

Jarvis, Acting for a Developer 2

Michaelman, Politics and Values 5

Robarts, Report of the Royal Commission on Metropolitan Toronto 6

Dupre, Intergovernmental Finance in Ontario: A Provincial-Local Perspective 11

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 16

Notes and Questions 21

CHAPTER II

THE ORGANIZATION OF MUNICIPALITIES

Introduction 22

A. Approaches to Municipal Organization 23

Plunkett, Urban Canada and Its Government 23

Note 29

Frug, City as Legal Concept 29

1. Municipal Council 30

Royal Commission on Metropolitan Toronto UPDATE 30

2. The Executive 31

(i) The Mayor 31

Jaffary & Makuch, Local Decision-Making and Administration 31

(ii) Reforming the Mayoralty 32

Jaffary and Makuch, Local Decision-Making and Administration 32

3. The Board of Control - Executive Committee 34

(i) Description 34

Plunkett, Urban Canada and Its Government 36

Notes 36

Jaffary & Makuch, Local Decision-Making and Administration 37

(ii) Reform 37

Rowat, The Canadian Municipal System 39

4. The Manager Plan 41

Rowat, The Canadian Municipal System 41

Notes and Questions 43

5. Council-City Commissioner System 45

Plunkett, Urban Canada and Its Government 45

6. Standing Committees 46

Jaffary and Makuch, Local Decision-Making 46

Note 46

7. Approaches to Reform 47

(i) The Basic Assumption - Policy v. Administration 47

Jaffary and Makuch, Local Decision-Making and Administration 47

Hickey, Decision-Making Processes in Ontario's Local Governments 51

(ii) Three Examples of Reform 57

(a) Winnipeg 57

Proposal for Urban Reorganization in the Greater Winnipeg Area 57

Note 60

Cook & Feldman, Approaches to Local Government Reform in Canada: The Case of Winnipeg 61

W. Magnusson
City Politics in Canada 62

(b) Administrative Districts 63

Jacobs, The Death and Life of Great American Cities 63

(c) Toronto 65

City of Toronto Neighbourhood Services Work Group, Report 65

B. The Reorganization of Municipalities 69

1. The Need for Reform 69

Advisory Committee on Intergovernmental Relations, In Search of Balance: Canada's Intergovernmental Experience 69

Advisory Committee on Intergovernmental Relations, Alternative Approaches to Governmental Reorganization in Metropolitan Areas 71

2. Distribution of Responsibilities 76

(i) The Metropolitan Toronto Example 76

(ii) Regional Government 77

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 77

Notes 84

3. The Problems With Reorganization 84

(i) Boundaries 84

Robarts, Report of the Royal Commission on Metropolitan Toronto 85

(ii) Special Purpose Bodies 86

Bureau of Municipal Research, "The 101 Governments of Metro Toronto" 86

Jaffary and Makuch, Local Decision-Making and Administration 95

Note 96

(iii) Representation 96

Jaffary and Makuch, Local Decision-Making and Administration 96

(iv) Intra Regional Conflict 102

Simpson, City Loses important Votes at First Meeting of Metro Council 102

Globe & Mail, City Decides on Legal Fight over Spadina 102

Note 103

Globe & Mail, York Joins City in Opposing Spadina Paving 103

Note 105

Weinstein, "The Effect of the Federal Reapportionment Decisions on Municipal Government" 105

(v) An Alternative: The Winnipeg Experience 106

Committee of Review City of Winnipeg Act, Report and Recommendations 106

Globe & Mail, Assessing the Plan to Reform Winnipeg's Government 113

CHAPTER III

LOCAL GOVERNMENT FINANCING

Introduction 120

A. Introduction 121

1. Municipal Finance Generally 121

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 121

Local Government Finance in Ontario (Ministries of Treasury and Economics & Intergovernmental Affairs) 121

2. The Property Tax 136

The Ontario Committee on Taxation, Report: Volume II - The Local Revenue System 136

Plunkett, The Financial Structure and the Decision-Making Process of Canadian Municipal Government 138

B. Restraints on Municipal Finance 140

1. Political Restraints 140

Plunkett, The Financial Structure and The Decision-Making Process of Canadian Municipal Government 140

Statement by Paul V. Godfrey, President Canadian Federation of Mayors and Municipalities 144

Notes 146

2. Legal Restraints 146

Re Corporation of the Township of Nepean 147

Jaffary and Makuch, Local Decision-Making and Administration 153

City of Toronto v. Municipality of Metropolitan Toronto 159

Re Victoria Harbour Sewage Service 162

Lewis v. Town of Prescott 167

Note 168

C. Property Tax Assessment 169

1. Who is Liable for Property Taxation 169

2. What is Assessable Property 169

Northern Broadcasting Co. Ltd. v. Improvement District of Mountjoy 170

Notes and Questions 173

3. Exemptions from Taxation 174

Makuch, Municipal and Planning Law 174

(i) Crown Land 175

Makuch, Municipal and Planning Law 175

Notes 177

(ii) Indian lands 177

(iii) Places of Worship and Cemeteries 177

Re Presbyterian Church Building Corp. and Assessment Comm. for Algoma 177

Re Singh and City of Sudbury 181

Notes 186

(iv) Public Education Institutions, Philanthropic or Religious Seminaries and Educational Seminaries 186

Notes 187

Seafarers Training Institute v. Township of Williamsburg 188

Notes 192

(v) Public Hospitals, Highways, Municipal Property, Boy Scouts and Girl Guides and Industrial Farms 193

(vi) Municipal Properties 193

Makuch, Municipal and Planning Law

Notes 194

(vii) Charitable Institutions 195

Makuch, Municipal and Planning Law 195

Notes 196

(viii) Children's Aid Societies, Scientific or Literary Institutions and Battle Sites 197

(ix) Machinery and Equipment Used for Manufacturing or Farming Purposes 197

Notes 197

(x) The Interpretation of "Property Of" 198

Makuch, Municipal and Planning Law 198

(xi) Exceptions to Certain Exemptions and Municipal Exemptions 199

Makuch, Municipal and Planning Law 199

(xii) Bonuses 200

Re Whitton and City of Ottawa 200

Note 201

4. Valuation of Property 203

(i) Market Value 203

Ward, Market Value Re-Assessment 203

Montreal v. Sun Life Assurance Co. of Canada 210

Assessment Commissioner of the York Assessment Office v. Office Speciality Ltd. 221

Carreiro et al. v. Regional Assessment Commissioner, Region No. 9 223

Notes 225

(ii) Equity 226

(a) Introduction 226

Joint Committee on Property Tax Reform Interim Report: The Present Property Tax System 226

Note 228

(b) Section 65 228

Foxhead Inn Ltd. v. Regional Assessment Commissioner 229

Regal Stationary Co. Ltd. v. Regional Assessment Commissioner, Region No. 11 230

Downtown Oshawa Property Owners' Association, Hovell Holdings Limited and Drew Estate v. Regional Assessment Commissioner, Region Number 13, The Corporation of the City of Ottawa 231

Notes 234

Regional Assessment Commissioners Region No. 2 et al. v. Ontario Steel Products Co. Ltd. 235

Notes 238

(c) Section 63 238

Campeau v. Regional Assessment Commissioner, Region No. 29 238

(iii) Special Provision for Farm Land 239

(iv) Special Provisions for Reforested Lands, Wood Lands and Orchards 240

(v) Special Provisions for Golf Courses 240

(vi) Other Special Provisions 240

5. Business Assessment 241

(i) Liability for Business Assessment - Carrying on a Business 241

Regional Assessment Commissioner v. Caisse Populaire de Hearst Ltée 241

Notes and Questions 245

Re Saga Canadian Management Services Ltd. and City of Ottawa et al. 246

Notes 251

(ii) Rate of Business Assessment 252

Re Regional Assessment Commissioner, Region No. 18 and Hudson's Bay Co. 252

Notes and Question 258

6. Appeals 259

Downtown Churchworkers Association of the Anglican Church of Canada and Dioceses of Toronto v. Regional Assessment Commissioner, Region No. 7 et al. 260

D. Local Improvements and Special Assessment 266

E. Reform 267

Financing Development of Local Government in Ontario 267

Notes and Questions 268

Report of the Royal Commission on Metropolitan Toronto 269

CHAPTER IV

JUDICIAL REVIEW OF MUNICIPAL ACTION

Introduction 287

A. Constitutionality 288

(i) Distribution of Powers: case summaries 288

Notes and Questions 292

(ii) The Charter of Rights and Freedoms 292

McCutcheon v. City of Toronto 292

Canada (Eve) Studio v. Winnipeg 295

Blanchfield v. Corp. City of Ottawa 297

Notes 297

Tushnet, Ely and Constitutional Theory 298

Tribe, Process Based Theories 298

Judicial Review 299

Eddington v. Corporation of the District of Surrey 299

B. Express Authority 299

Ottawa Electric Light Co. v. Corporation of Ottawa 299

Note 300

Morrison v. Kingston 301

Re Pride Cleaners and Dyers 303

Re Christie Tax Ld. and Doran 306

Notes 307

Re Regional Municipality of Ottawa-Carleton and Voyageur Colonial Ltd. et al. 308

Re Weir et al. and the Queen 311

Notes and Questions 314

Report of the Royal Commission on Metropolitan Toronto 317

C. Delegation 319

(i) To Employees 319

Russell v. The Corporation of Toronto 319

R. v. Sandler 320

R. v. Campbell 323

(ii) To Council Committees 324

Simon v. Gastonguay et al. 324

(iii) To the Community 327

R. v. Sepanary 327

Re Davies and Village of Forest Hill 328

(iv) Reform 331

Report of the Royal Commission on Metropolitan Toronto 331

D. Discrimination 332

(i) Subclassification 332

Re Bunce and Town of Coburg 332

R. v. Donald B. Allen Ltd. 334

City of Ottawa v. Royal Trust Co. 335

City of Montreal v. Arcade Amusements 338

(ii) Permits and Licences 352

City of Verdun v. Sun Oil Co. Ltd. 352

(iii) Administrative Action 355

Atkinson v. Municipality of Metropolitan Toronto 355

E. Fettering 357

Galt Canadian Woodworking Machinery v. City of Galt 357

F. The Impact of Provincial Policy 358

Re Regional Municipality of Ottawa-Carleton and Township of Marlborough 358

R. v. Morin 361

A.G. for Ontario v. City of Mississauga 364

G. Vagueness 379

City of Montreal v. Arcade Amusements 379

Re Information Retailers Assoc. of Metropolitan Toronto and Municipality of Metropolitan Toronto 383

Notes 385

H. Unreasonableness 386

Kruse v. Johnson 386

Note 387

I. Bad Faith 388

Re Howard and City of Toronto 388

Kuchma v. Rural Municipality of Tache 391

Canada (Eve Studio) v. Winnipeg 393

J. Geographic Limitations 397

R. v. Roy 397

Notes 402

K. Technical Requirements 403

Re Whitton and City of Ottawa 403

CHAPTER I

INTRODUCTION

The purpose of this course is to provide the student with a basic understanding of the workings of local government, the constraints within which municipalities operate, and in particular the planning powers of municipalities. Lawyers engaged in the practice of municipal law are often called upon to fill a number of roles: acting as counsel to municipal governments and preparing municipal legislation; handling suits for or against the municipal corporation; advising the municipality on finance and bond issues; assisting either the municipality or private citizen with planning or other policy matters; advising on municipal reorganization and intergovernmental relations. In any of these capacities it is important for the lawyer to have an understanding of the institutional, the financial and the legal framework within which municipalities function. An understanding of the municipal planning function is also crucial as it is one of the most important aspects of municipal authority.

The materials in this casebook survey a number of these important areas: municipal organization; problems in local government finance; judicial review of municipal powers; the role of the municipality in planning, the provincial role in planning and in particular the role of the Ontario Municipal Board as an administrative review agency. Official plans, zoning by-laws, and development agreements are important aspects of this examination. It is hoped that this course will provide both a broad perspective from which to view municipal government and planning and a narrower perspective from which specific legal problems particularly with respect to planning may be analyzed.

The theme of this course is that the purpose of local government is to ensure local political control over the delivery of local services and local planning decisions. The adequacy of present local government structures, and authority and the appropriateness of judicial and administrative review of local government action should be kept in mind.

CHAPTER II

THE ORGANIZATION OF MUNICIPALITIES

Introduction

The purpose of Part A of this chapter is to examine the way in which municipalities may be organized. It deals with a number of alternative methods used to provide for a legislative and executive body at the local level of government. Most people are very familiar with the structure of federal and provincial governments which have a high degree of uniformity. Local governments, councils and executive bodies, differ from municipality to municipality, as does the relationship of these bodies with the administrative services within the municipality.

The organization of municipalities is important because it may impose certain legal restraints on decision-making at the local level. For example, council may not be able to act without executive approval. It is also important for a lawyer to understand the structure of a municipality for he often acts as an advocate for his client's interests and must therefore appreciate how to guide those interests through the labyrinth of municipal decision-making bodies be they legislative, executive or administrative. Part A of this chapter attempts to provide that understanding.

Part B of this chapter introduces a new dimension to the labyrinth by adding to the above concerns regarding municipal structure additional concerns respecting the suitability of existing municipal boundaries and functions. This section deals with metropolitan and regional governments. These governments were designed in part to deal with the problem of urbanization growing beyond municipal boundaries and the problem of municipalities being unable to adequately deal with urbanization because of numerous special bodies which have jurisdiction within the municipalities. The reorganization of municipal government therefore assumes a basic legislative, executive and administrative structure in municipalities but adds on to that a new level of local government with a similar structure. Issues then arise as to divisions of jurisdiction between the levels, representation at the various levels, and the appropriateness of adding a new level of local government.

CHAPTER III

LOCAL GOVERNMENT FINANCING

Introduction

The purpose of this chapter is two-fold. It is firstly to present the limitations that exist on the ability of municipalities to raise revenues and to make expenditures. Those limitations are both political and legal. Both are important to the lawyer. The political limitations can greatly influence policy and in particular planning decisions which the lawyer may be trying to effect on behalf of a client. The legal limitations are important both in providing appeals from those decisions and in influencing municipal decisions. The role of the Ontario Municipal Board in this process is introduced.

The second purpose is to introduce assessment and some important forms of municipal taxation. Assessment is important in that it affects every owner of real property.

In reading these materials consideration should be given to whether all the restrictions presently existing on municipal authority in financing are desirable or necessary. As well, thought should be given to changing the methods of raising municipal revenues. Of concern here is the equity of the present system in terms of the bearers of the burden of taxation and the impact the present system has on the decision-making process within municipalities.

CHAPTER IV

JUDICIAL REVIEW OF MUNICIPAL ACTION

Introduction

The purpose of this chapter is to indicate the more traditional legal constraints on municipalities. These are varied and important - perhaps the most important being that a municipality can do "only what it is expressly empowered to do". These materials do not introduce any new legal concepts, indeed they indicate that local governments are in law like any other administrative tribunal.

A most important consideration to keep in mind in reading this section of the materials is to consider the effect of these limitations on the abilities of municipalities to function as "local governments" which can determine local priorities and policies. It is clear that municipalities are not sovereign and are closely directed by the province. It has been argued that traditional methods of statutory drafting and interpretation help create this situation and help place municipalities in the role of administrators of provincial policy. If this is so are there methods to alter this relationship to encourage the courts to take a different approach in interpreting municipal powers? The rule against delegation is also an important consideration. It helps to preserve "the rule of law". Consideration should be given, however, to the effect the rule against delegation has on the ability of municipal councils to formulate and develop policy as do the provincial and federal legislatures. In order to examine these issues, Chapter I, The Power to Delegate, and Chapter V, Services (The Provincial Municipal Relationship and Local Autonomy) found in Local Decision-Making and Administration (Jaffary and Makuch) should be read carefully with these materials.